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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their  
capacities as Trustees of the LABORERS  
HEALTH AND WELFARE TRUST FUND  
FOR NORTHERN CALIFORNIA; LABORERS  
PENSION TRUST FUND FOR NORTHERN  
CALIFORNIA; LABORERS VACATION-  
HOLIDAY TRUST FUND FOR NORTHERN  
CALIFORNIA; and LABORERS TRAINING-  
RETRAINING/APPRENTICESHIP TRUST  
FUND FOR NORTHERN CALIFORNIA,

Plaintiffs,

v.

JS TAYLOR CONSTRUCTION, INC.,

Defendant.

No.

**COMPLAINT FOR AUDIT, BREACH  
OF CONTRACT, DAMAGES, AND  
INJUNCTION (ERISA 29 U.S.C. §1001,  
ET SEQ., 29 U.S.C. §185)**

Plaintiffs complain of Defendant, and for cause of action allege:

**JURISDICTION AND INTRADISTRICT ASSIGNMENT**

**I.**

This action arises under and is brought pursuant to section 502 of the Employee Retirement Income Security Act, as amended (“ERISA”) (29 U.S.C. § 1132), and section 301 of the Labor Management Relations Act (“LMRA”) (29 U.S.C. § 185). Venue properly lies in this

1 district court since contributions are due and payable in the County of San Francisco. Therefore,  
2 intradistrict venue is proper.

### 3 **PARTIES**

#### 4 **II.**

5 At all times material herein, Plaintiffs The Board of Trustees were Trustees of the  
6 Laborers Health and Welfare Trust Fund for Northern California (hereinafter “Welfare Fund”);  
7 Laborers Pension Trust Fund for Northern California (hereinafter “Pension Fund”); Laborers  
8 Vacation-Holiday Trust Fund for Northern California (hereinafter “Vacation Fund”); and  
9 Laborers Training-Retraining/Apprenticeship Trust Fund for Northern California (hereinafter  
10 “Training Fund,” together with the Welfare Fund, Pension Fund and Vacation Fund, collectively  
11 referred to as “Trust Funds”). At all times material herein, each of the above-named Trust Funds  
12 was, and now is, an employee benefit plan created by a written Trust Agreement subject to and  
13 pursuant to section 302 of the LMRA (29 U.S.C. § 186), and a multi-employer employee benefit  
14 plan within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C. §§ 1002, 1003 and 1132).  
15 Each of the above-named Trust Funds is administered by a Board of Trustees which may bring  
16 this action in the name of the Trust Funds pursuant to the express provisions of the Trust  
17 Agreements. All of the above named Trust Funds and their respective Board of Trustees shall  
18 hereinafter be designated collectively as “Plaintiffs.”

#### 19 **III.**

20 At all times material herein, JS Taylor Construction, Inc. (hereinafter referred to as  
21 “Defendant”), has been an employer within the meaning of section 3(5) and section 515 of  
22 ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an industry affecting commerce within  
23 the meaning of section 301 of the LMRA (29 U.S.C. § 185).

### 24 **ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

#### 25 **IV.**

26 At all relevant times, Defendant was signatory and bound to a written collective  
27 bargaining agreement with the Northern California District Council of Laborers (hereinafter  
28 “Union”), a labor organization within the meaning of section 301 of the LMRA (29 U.S.C. §

185). Defendant became subject to all the terms and conditions of the Laborers Master Agreement (hereinafter “Master Agreement”) by virtue of signing a Memorandum of Agreement (hereinafter “Memorandum Agreement”) with the Union, which incorporated by reference the Master Agreement. A true and correct copy of the Master Agreement for the period 2014 through 2019 is attached hereto as Exhibit “A,” and a true and correct copy of the Memorandum Agreement is attached hereto as Exhibit “B,” both of which are incorporated by reference herein. The Master Agreement by its terms incorporates the various Trust Agreements establishing each of the Plaintiffs Trust Funds. By said Master Agreement, Defendant promised that it would contribute and pay to Plaintiffs the hourly amounts required by the Agreements for each hour paid for or worked by any of its employees who performed any work covered by said Agreements, and that it would be subject to and bound by all of the terms, provisions and conditions of the Trust Agreements.

#### V.

The Agreements provide for prompt payment of all employers contributions to the Trust Funds and provide for the payment of liquidated damages and interest on all delinquent contributions, attorneys’ fees, and other collection costs, and for the audit of the signatory employer or employers’ books and records in order to permit the Plaintiffs to ascertain whether all fringe benefit contributions have been timely paid as required by the applicable labor agreements and law.

### **FIRST CLAIM FOR RELIEF** **(BREACH OF CONTRACT)**

#### VI.

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

#### VII.

Defendant has failed, neglected, or refused to make timely fringe benefit contributions as required by the collective bargaining agreements and Trust Agreements and there is now due and owing and unpaid to Plaintiffs contributions in the sum estimated to be at least \$5,265.36; liquidated damages and interest for contributions reported but not paid in the amount estimated to be at least \$1,540.93 for the period of July 2016 through September 2016; and contributions for

hours not reported in the amount estimated to be at least \$5,321.20.

**VIII.**

Plaintiffs are the intended third-party beneficiaries of the Agreement, but Trust Fund contribution delinquencies are excluded from the arbitration provisions of the Agreement.

**IX.**

Plaintiffs have complied with all conditions on their part to be performed under the terms of the applicable agreements.

**X.**

Plaintiffs are entitled to reasonable attorneys' fees, interest, and other reasonable expenses incurred in connection with this matter due to Defendant's failure and refusal to pay all fringe benefit contributions due and owing pursuant to the terms of the applicable Labor Agreements, Trust Agreements, and ERISA section 502(g)(2) (29 U.S.C. § 1132(g)(2)).

**SECOND CLAIM FOR RELIEF**  
**(ACTUAL DAMAGES FOR BREACH OF CONTRACT)**

**XI.**

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

**XII.**

Defendant has failed, neglected and refused to make timely fringe benefit contributions as required by the applicable Collective Bargaining Agreements and Trust Agreements, and has caused Plaintiffs actual damages in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF**  
**(DAMAGES AND EQUITABLE RELIEF FOR BREACH OF FIDUCIARY DUTY)**

**XIII.**

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

**XIV.**

Defendant has failed, neglected or refused to make timely fringe benefit contributions to the Trust Funds as required by the applicable collective bargaining agreements and Trust Agreements.

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**XV.**

Defendant's neglect or refusal to make timely fringe benefit contributions and reports pursuant to the terms of the above-mentioned Agreements constitutes a violation of ERISA section 515 (29 U.S.C. § 1145).

**XVI.**

Defendant, in agreeing to the terms and conditions of the aforementioned Trust Agreements, assumed a fiduciary duty to Plaintiffs, which required Defendant to submit timely and accurate reports of hours worked or amounts due, together with payments to the Trust Funds. Defendant exercised control over any contributions due, which are assets of Trust Funds, and Defendant was fiduciary as defined by ERISA section 3(21) (29 U.S.C. § 1002(21)).

**XVII.**

The actions of Defendant complained of herein constitute a violation of fiduciary duties as defined by ERISA, 29 U.S.C. §§ 1001, et seq.

**XVIII.**

Unless enjoined by this Court, Defendant will continue to fail, neglect, or refuse to remit appropriate fringe benefit contributions to the Trust Funds and thereby cause Plaintiffs irreparable harm for which there exists no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**  
**(AUDIT)**

**XVIX.**

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

**XX.**

Plaintiffs believe that additional amounts may be due and owing and also pray for an audit of Defendant's books and records for the period of March 2015 through the last completed quarter, to determine same.

**WHEREFORE**, Plaintiffs pray judgment against JS Taylor Construction, Inc., as follows:

1. That Defendant be ordered to pay contributions in the amount of \$5,265.36, plus interest thereon;

2. That Defendant be ordered to pay liquidated damages in the amount of \$1,540.93, plus interest thereon;

3. That Defendant be ordered to pay contributions for hours not reported in the amount of \$5,321.20;

4. That Defendant be ordered to pay actual damages according to proof;

5. That this Court issue an Order directing and permanently enjoining Defendant to timely submit to Plaintiff Trust Funds, all reports and contributions due and owing by Defendant plus interest, liquidated damages, attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

6. That this Court issue an Order permanently enjoining Defendant for so long as it remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely submit required monthly contributions reports and payments as required by the terms of the collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

7. That Defendant be ordered to pay attorneys' fees;

8. That Defendant be ordered to submit to an audit between Plaintiffs and Defendant for the period of March 2015 through the last completed quarter;

9. That Defendant be ordered to pay costs of suit herein;

10. That this Court grant such further relief as this Court deems just and proper; and

11. That this Court retain jurisdiction of this matter to enforce the Order compelling an Audit and payment of all amount found due and owing.

Dated: June 15, 2017

WEINBERG, ROGER & ROSENFELD  
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By: /s/ Concepcion E. Lozano-Batista  
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